IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.242 OF 2007
IN
APPEAL FROM ORDER NO.164 OF 2007

Najma Sajjad Kanji ...Applicant

vs.

Tara Dattoba Lokahande ...Respondent

Ms Manorama Mohanty i/b M/s.S.K.Srivastava & Co. for the Applicant
Mr.S.L.Suryawanshi for the Respondent

CORAM: A.S.OKA,J.
DATE : MARCH 20,2007.

P.C.:

1. Rule. The Advocate for the Respondent waives service. Taken up for hearing forthwith.

2. The trial court has set aside the decree passed in favour of the Appellant-Plaintiff. Appeal is admitted. A contention has been raised that the decree passed in favour of the Appellant was under Order VIII Rule 10 of the Code of Civil Procedure,1908 and in view of the decision of a Division Bench of this court reported in 1998 (4) All M.R. page 510, a Notice of Motion taken out by the Respondent under Order IX Rule 13 of the said Code was not maintainable.

3. As the Appeal is admitted, proceeding of the suit will have to be stayed. By the impugned order, notwithstanding the

setting aside of the decree, the trial Court has permitted the Appellant-Plaintiff to continue in possession of the suit premises as an Agent of the Court Receiver. This direction cannot be stayed as the decree in favour of the Appellant has been set aside.

4. Hence, Civil Application is disposed of by passing the following order :

i) Proceeding of the pending suit on the basis of the impugned order dated 24th January 2007 will remain stayed. However, clause 3 of the operative part of the impugned order is not stayed.

ii) The Court Receiver will immediately act upon clause 3 of the impugned order by taking necessary steps.

iii) This order is without prejudice to the right of the Respondent of challenging clause 3 of the operative part of the impugned order.

iv) Civil Application is disposed of in above terms.

JUDGE